



# COUNTY OF LOS ANGELES

## CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

### MEMBERS OF THE BOARD

December 1, 2003

Maria M. Oms  
Auditor-Controller  
Lloyd W. Pellman  
Office of the County Counsel  
Rocky Armfield  
Chief Administrative Office

Honorable Board of Supervisors  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Re: **Aames Financial Corporation v. County of Los Angeles**  
**Los Angeles Superior Court Case No. BC 291 746**

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$275,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Chief Administrative Office.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Chief Administrative Office.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,


Maria M. Oms, Chairperson  
Los Angeles County Claims Board

MMO/fsl

Enclosures

# MEMORANDUM

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ADRIENNE M. BYERS   
Principal Deputy County Counsel  
Public Works Division

RE: Aames Financial Corporation v. County of Los Angeles  
Los Angeles Superior Court Case No. BC 291 746

DATE OF  
INCIDENT: February 2002

AUTHORITY  
REQUESTED: \$275,000

COUNTY  
DEPARTMENT: Chief Administrative Office

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## CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of  
Supervisors for Approval

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\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

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\_\_\_\_\_, County Counsel  
**LLOYD W. PELLMAN**

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\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on \_\_\_\_\_, 2003

## SUMMARY

This is a recommendation to settle for \$275,000 a lawsuit filed by Aames Financial Corporation ("Aames") for breach of a lease which provided Aames with private parking at the Disney Concert Hall parking garage.

## LEGAL PRINCIPLE

A public entity is liable for damage caused by breach of contract.

## SUMMARY OF FACTS

This is a state court action for damages filed by Aames for breach of contract against the County. The contract involved is a lease entered into between the County and Aames in 1997 ("Lease") for the rental of parking spaces to Aames in the Disney Concert Hall parking garage ("Disney Garage"), a County-owned facility. In this lawsuit, filed in March 2003, Aames seeks nearly \$590,000, contending that the County breached its obligations under the Lease because the County failed to accommodate Aames' request for additional parking spaces, and because the County refused to honor Aames' five-year option to renew the Lease.

Under the terms of the Lease, Aames was required to rent a minimum of 150 parking spaces for a five-year term which commenced in May 1997. The Lease contained provisions which addressed Aames' ability to rent additional spaces up to a total of 400. The Lease also gave Aames the option to extend the parking arrangement for two 5-year periods under certain circumstances. A dispute arose between the County and Aames as to the interpretation of the Lease provisions relating to the rental of additional spaces. A dispute also arose as to whether the County was required to renew the Lease for another five years after the expiration of the initial five-year term.

Initially, the County believed it could provide Aames with sufficient parking spaces at the Disney Garage. However, requirements for usage of the Disney Garage changed as plans for beginning the actual construction of the Disney Concert Hall ("DCH") changed. Before the Lease was executed in 1997, the County sent a letter to Aames seeking concurrence that if temporary closure of the Disney Garage became necessary during the period of the DCH construction, the County would provide Aames, at no additional cost, with a substitute block of contiguous parking spaces at the Music Center parking structure, also a County-owned parking facility. Aames agreed to this proposed contingency parking arrangement.

As anticipated, construction of the DCH did require that the County provide substitute parking for Aames at the Music Center. Pursuant to a letter dated March 24, 1999, Aames was notified that the County would provide substitute parking at the Music Center effective May 3, 1999. In January 2002, Aames requested additional parking spaces and renewal of the five-year lease. The County refused.

The Lease essentially provided that Aames could *request* additional parking spaces. It is the County's position that this provision did not specifically obligate the County to accommodate such a request. Aames disagreed with this position, contending that the Lease only required it to make requests for additional parking in certain numerical increments, but once the request was made, the County was obligated to comply. The Lease also specified that Aames' right to renew is subject to the "operational requirements" of the DCH and that the County could evaluate those requirements in deciding whether to renew upon completion of the DCH. The Lease language, however, presents some ambiguity because it did not contemplate the possibility that the DCH would not be completed before the expiration of the initial five-year term. Aames contends that because the DCH was not completed, the operational requirements of DCH were not relevant and the County was obligated to renew the Lease. The County, on the other hand, contends that since the DCH was not open by the time the first five-year lease period ended, it was unable to evaluate the operational requirements of the DCH. Attempts to compromise on the terms relating to the renewal and the provision of additional spaces were unsuccessful. As a result, the County ultimately chose not to renew the Lease option.

As a result of the County's refusal to renew the Lease, Aames entered into a long-term parking lease at the World Trade Center at a higher rental rate and seeks to recoup the difference between the amount paid under that lease and the County Lease over a period of five years, plus expenses incurred for three months for alternate parking for some of its employees after the County refused to provide additional parking.

A trial date is set for March 1, 2004.

## DAMAGES

Aames seeks damages totaling approximately \$590,000, plus the award of attorneys' fees.

## STATUS OF CASE

The proposed settlement was reached during a voluntary mediation between the parties. The County has incurred approximately \$30,000 in in-house legal fees and costs to date.

## EVALUATION

The trial in this matter likely would be heard by the Court, rather than by a jury. Aames waived a jury trial; the County reserved the right to have a jury trial. We believe that a judge may find that the County's position with respect to Aames' right of renewal of the Lease and to lease additional parking spaces is not supported by the Lease language. This assessment is bolstered by the opinion of the two mediators who heard this case. Both mediators noted that because of the ambiguous language in the Lease, and general legal principles pertaining to contract construction, there is some exposure to the County for liability.

Further, the Lease agreement contains an attorneys' fee provision which awards those fees to the prevailing party in any dispute regarding the Lease. Aames' in-house counsel had been handling the matter for plaintiff. However, if the matter does not settle, Aames has indicated that it will forward the case to outside counsel for handling for trial.

We believe that a damage award in the range of between \$350,000 and \$550,000, plus an attorneys' fees award in the approximate range of \$75,000 to \$100,000, could result if the judge were to find in favor of plaintiff on both the additional parking and renewal-option legal issues.

Given the considerable risks and costs associated with trial, we recommend that this case be settled for \$275,000. The Chief Administrative Office concurs with this recommendation.

APPROVED:



RICHARD D. WEISS

Acting Assistant County Counsel

AMB:cnz

## CHIEF ADMINISTRATIVE OFFICE

### CORRECTIVE ACTION PLAN

**FACILITY:** Disney Concert Hall Parking Garage  
**NAME:** AAMES Financial Corporation v. County of Los Angeles  
**CASE NO.** BC 277 184  
**INCIDENT DATE:** February 2002  
**INCIDENT LOCATION:** Disney Concert Hall Parking Garage

**RISK ISSUES:** This is an alleged breach of contract lawsuit brought on by Aames Financial Corporation ("Aames") against the County in connection with a lease agreement under which Aames acquired the right to use up to 400 parking spaces at the Disney Concert Hall Subterranean Garage ("Garage"). The settlement is proposed for economic reasons. It is believed that a trial may put the County at risk of greater losses.

**INVESTIGATIVE SUMMARY:** On or about March 5, 1997, the Chief Administrative Office ("CAO") received a lease proposal from Cushman Realty Corporation on behalf of Aames for the leasing of not less than 150 parking spaces with an option to increase up to 400 spaces at the Garage. The proposal was made in response to the County's advertising of the Garage's availability to the general public at the rate of \$100 per month. This was an effort to generate additional income from the Garage, which had been primarily used for juror parking and for public daily and monthly parking since its completion. The timing and funding for the Disney Concert Hall ("Hall") had not yet been ascertained, and the leasing of the Garage to private sector users was seen as a means to offset ongoing operating expenses and debt service obligations. Aames was in the process of relocating its corporate offices to downtown Los Angeles and had requested a long-term commitment. As a result, a five-year lease with two five-year options to renew was negotiated. In anticipation that the Hall would be completed within the original five-year term of the lease, the option to renew was made conditional upon the County making a determination that the parking lease would not interfere with the operational requirements of the Hall. In addition, in order to retain as much flexibility as possible, the County reserved the right to relocate Aames to the Music Center garage in the event construction and/or related activities required a temporary closure of the Garage. This was included even though the Department of Public Works had concluded the anticipated construction activities for the Hall would not prevent the continued use of the Garage for parking. The only lease entered into by County for parking at the Hall was with Aames.

On May 20, 1997, the Board approved the lease agreement with Aames for a five-year term with two conditional five-year options to renew.

On April 14, 1999, at the request of Disney Partners I, the CAO advised the Board of the temporary closure of the Garage and planned relocation of employees and juror parking to other nearby Civic Center parking lots. Aames, as provided by the lease, was likewise relocated to the Music Center garage on or about May 24, 1999. Although this closure was deemed temporary at the time and expected to last approximately one year, the Garage, due to construction-related reasons, remained unavailable for parking purposes throughout the period of construction of the Hall.

On January 15, 2002, Aames requested the County to increase the number of parking spaces from 150 to 230, and advised of its intent to exercise the option to renew the lease for an additional five years. Unless renewed, the lease would have expired on May 19, 2002. By letter dated February 15, 2002, County Counsel responded to Aames indicating the County acknowledged Aames' rights for renewal under the lease, but reserved the right to cancel it at such time as the Hall was completed and the County had an opportunity to assess the impact and compatibility of Aames' occupancy with the operational needs of the Hall as contemplated under the lease. Aames objected to the County's interpretation of the lease language and indicated that unless its requests for additional spaces and lease extension was met, it would be left with no alternative but to relocate its employees to the World Trade Center and incur increased costs. Various attempts to reach a resolution through telephone conferences and further written correspondence, including an offer of parking spaces outside of the area coupled with shuttle service, failed to satisfy Aames.

On April 22, 2002, Aames notified the County that all of its employees would be out of the Music Center garage by May 1, 2002. It further contended that the County was in breach of the lease, and alleged that, as a result, Aames had suffered damages estimated at \$590,000 due to the higher parking cost at the World Trade Center. Aames subsequently, on October 3, 2002, filed a lawsuit against the County.

Based on an assessment of litigation risk, County Counsel, with CAO's concurrence, negotiated a settlement, subject to the approval of the Claims Board and the Board of Supervisors, in the amount of \$275,000, at a voluntary mediation held on October 10, 2003.

## **CORRECTIVE ACTION**

This lawsuit resulted from the confluence of various events that could not have been foreseen at the time the lease agreement was entered into. For instance, the agreement envisioned the Hall would have been completed within five years. However, funding issues prevented construction from getting underway until mid-1998, and the uniqueness of the design and cutting-edge techniques required for its construction extended the construction schedule through the third quarter of 2003. It was also anticipated that the Garage would be available for parking during the construction period. However, the lack of available nearby lay-down space for construction materials ultimately required that the Garage be used for that purpose to the exclusion of parking.

Reserving the right to cancel the lease with reasonable notice would have prevented this litigation had Aames been agreeable to such a provision. The CAO will make this a negotiating priority for any future revenue leases. It must be noted, however, that in some instances, such as the Aames case, making the right to cancel a condition for entering into a lease would have derailed the negotiations for an agreement. Aames would have simply pursued other opportunities where a firm term commitment could be achieved, even at a higher rent, since it required certainty as to its parking needs. As previously mentioned, the primary purpose of the Aames lease was to generate an income stream for the County to offset operating and debt service costs for the Garage, provided that it could be accomplished without interfering with the construction or operation of the Hall. During the nearly five years of the lease, Aames paid the County \$1,129,000. This revenue could not have been realized if the lease, as a matter of policy, had been required to include a cancellation provision for convenience. It is therefore appropriate to carefully evaluate the risk/reward factors of this revenue-generating agreement for applying its lessons in future agreements. It appears that in this case, and in spite of this proposed settlement, the County correctly balanced the need to generate revenue with preserving its options for the construction of the Hall.

CB:cc

CAPDisneyGarage